

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

MAR 20 2002

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Michael N. Milby, Clerk

IN RE ENRON CORPORATION)
SECURITIES LITIGATION,)

THIS DOCUMENT RELATES TO:)
All Cases)

CIVIL ACTION NO. H-01-3624
Lead Case

**MEMORANDUM OF LAW IN SUPPORT OF MOTIONS
FOR CLARIFICATION (WITH EXPEDITION) OF THIS COURT'S
MEMORANDUM AND ORDER DATED FEBRUARY 15, 2002**

Henry H. Steiner, Daniel Kaminer, Christine Benoit, Michael and Jennifer Cerrone, and Harold Karnes (the "Preferred Purchaser Plaintiffs"), submit this memorandum of law in support of their motions for clarification of this Court's Memorandum and Order dated February 15, 2002 (the "Opinion") appointing the Regents of the University of California Lead Plaintiff in this action, and the law firm of Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss") as Lead Counsel, and for an expedited hearing on the clarification motion. The Preferred Purchaser Plaintiffs seek clarification of their role in this action, particularly given that the Regents of the University of California never purchased even one share of Enron preferred stock.

The Preferred Purchaser Plaintiffs request that their counsel be permitted to review the draft consolidated complaint (and comment to Milberg Weiss upon) sufficiently prior to the April 1, 2002 deadline for filing the consolidated complaint so that any comments to Milberg Weiss will be meaningful. The Court's Opinion makes clear that this Court anticipates the possibility of creating, at the class certification stage, a separate class for Enron preferred stock purchasers. This Court's Scheduling Order further mandates that the consolidated complaint in this action be filed by April 1, 2002 and does not allow for amended pleadings. The rights of the Preferred Purchaser Plaintiffs, then, will be prejudiced if their claims are not asserted properly in the consolidated complaint.

Counsel for the Preferred Purchaser Plaintiffs asked Milberg Weiss if they could participate in drafting the consolidated complaint to ensure that facts and claims relevant and material to the Enron preferred stock purchasers are included therein. Milberg Weiss, however, refused to allow

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the Preferred Purchaser Plaintiffs' counsel to participate in any way in drafting the consolidated complaint. Milberg Weiss has even refused, to date, to let the Preferred Purchaser Plaintiffs' counsel see, prior to its April 1, 2002 filing, a draft of the consolidated complaint. Given no other choice, the Preferred Purchaser Plaintiffs bring this expedited motion for clarification of their role in this action and to protect their rights going forward.

ARGUMENT

This Court's Order overruling the Preferred Purchaser Plaintiffs' objections to consolidation recognized that the claims asserted by the Preferred Purchaser Plaintiffs were unique, and anticipated the possibility of creating a separate class to protect the interests of preferred stock purchasers at the class certification stage. This Court stated that the "objections [of the Enron preferred stock purchasers] can be effectively handled by dividing the class when class certification becomes an issue. Moreover, consolidation for pretrial matters does not necessarily mean that the claims will all be tried together, especially where the nature of the evidence and damage issues differ substantially." In re Enron Corp. Sec. Litig., C.A. No. H-01-3624, slip op. at 29, Harmon J. (S.D. Tex. Feb. 15, 2002).

The Preferred Purchaser Plaintiffs are concerned that their rights in this action will be prejudiced unless their counsel is (at a minimum) allowed to review and comment upon the consolidated complaint prior to its filing. As detailed in the briefs submitted by the Preferred Purchaser Plaintiffs in support of their Objection to Consolidation and their Motion for Appointment as Lead Plaintiff, and the supporting declaration to those motions of Steven Wolfe, the different nature of preferred stock and common stock as investment vehicles renders the claims of Preferred Purchaser Plaintiffs unique to purchasers of Enron preferred stock. The claims of the common stock and preferred stock purchasers differ as to the import of defendants' alleged fraud, proof of claims, calculation of damages and potential settlement.

The Preferred Purchaser Plaintiffs have also asserted a Texas state law claim for negligent misrepresentation relating to prospectus liability, with a wholly different class period – beginning

January 21, 1997 or earlier and ending with the commencement of the Class Period for the Section 10(b) claim in late 1998 – which is not available to Enron’s common shareholders. Since filing the Steiner action, counsel for the Preferred Purchaser Plaintiffs have uncovered additional facts relating to this negligent misrepresentation claim. As Milberg Weiss is most likely unaware of those new facts uncovered by the Preferred Purchaser Plaintiffs’ and does not represent any preferred stock purchasers, and has not devoted the considerable time spent by the Preferred Purchaser Plaintiffs’ counsel to considering the ways defendants’ alleged fraud impacted the preferred stock purchasers uniquely, the Preferred Purchaser Plaintiffs legitimately fear that Milberg Weiss may omit relevant facts or fail to plead their claims properly.

In order to protect their clients’ rights going forward, Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”), counsel for the Preferred Purchaser Plaintiffs, requested, by letter dated February 19, 2002, that Milberg Weiss: (1) involve Wolf Haldenstein in the drafting of the consolidated complaint to ensure that facts and claims relevant and material to the Enron preferred stock purchasers are included in the consolidated complaint; (2) provide Wolf Haldenstein with the transcripts of the Arthur Andersen deponents’ testimony as soon as they were transcribed; and (3) ask the Andersen deponents eight specific questions. Milberg Weiss failed to respond to Wolf Haldenstein’s letter of February 19, 2002 letter. Wolf Haldenstein then submitted a second letter to Milberg on March 7, 2002. Wolf Haldenstein’s second correspondence reiterated that the firm wished to participate in the drafting of the consolidated complaint to ensure that the Enron preferred stock purchasers’ claims are properly asserted at this time, and further requested that Wolf Haldenstein be allowed to participate in drafting discovery requests to ensure that documents relevant and material to the preferred purchasers’ claims are demanded during production. (Wolf Haldenstein’s February 19, 2002 and March 7, 2002 letters are attached hereto as Exhibits A and B).

On March 11, 2002, Helen Hodges of Milberg Weiss responded to Wolf Haldenstein’s previous two letters, rejecting the firm’s “assistance” at this time and instructing it to “avoid unnecessary work and expense as it will not be compensated or reimbursed.” (Attached hereto as

Exhibit C). On March 12, 2002, Robert Weintraub of Wolf Haldenstein wrote to Helen Hodges to ask if Milberg Weiss planned to provide Wolf Haldenstein with a draft of the consolidated complaint “sufficiently prior to filing so that we can have realistic input in the drafting process on behalf of the purchasers of Enron Preferred Stock.” (Attached hereto as Exhibit D). Milberg Weiss replied that day stating that it would “not be showing [Wolf Haldenstein] a draft of the consolidated complaint prior to its filing.” (Attached hereto as Exhibit E).

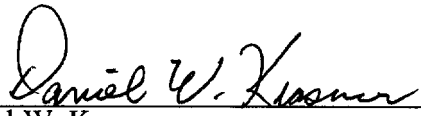
The Preferred Purchaser Plaintiffs believe, given the nature of the differences between their claims and those of purchasers of Enron’s other securities, as detailed fully in their earlier briefs, and that the Scheduling Order does not provide for an amendment to the Consolidated Complaint, that their rights will be prejudiced if their counsel is precluded from reviewing and commenting on the consolidated complaint sufficiently prior to filing. As April 1, 2002 is fast approaching, the Preferred Purchaser Plaintiffs move this Court for expedited relief, and petition this Court to direct Milberg Weiss to allow them to review and comment upon the consolidated complaint sufficiently prior to April 1, 2002 so as to protect their interests.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully submit that their motions for expedited relief be granted.

Dated: March 20, 2002

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